

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

LAS VEGAS, NEVADA

In re: THE RHODES COMPANIES,) E-Filed: 07/13/11
LLC,)
Debtor.) Case No.
BK-S-09-14814-LBR
Chapter 11

TRANSCRIPT OF PROCEEDINGS
OF
MOTION TO EXTEND TIME OF CLAIMS OBJECTION DEADLINE
TO STANLEY CONSULTANTS, INC.,
WITH PROPOSED ORDER, NO. 1374
AND
OBJECTION TO CLAIM 18-1 OF SLAUGHTER
IN THE AMOUNT OF UNLIQUIDATED, NO. 1366
AND
OBJECTION TO CLAIM 22 OF MIRAJROY RAYO AND ARTURO CASIMIRO
IN THE AMOUNT OF UNLIQUIDATED, NO. 1366
AND
OBJECTION TO CLAIM 61 OF COMMERCE ASSOCIATES, LLC,
IN THE AMOUNT OF UNKNOWN REORGANIZED DEBTOR'S OBJECTION
TO COMMERCE ASSOCIATES' PROOF OF CLAIM NO. 61-1
PURSUANT TO BANKRUPTCY RULE 3007
AND BANKRUPTCY CODE SECTION 502(B), NO. 1390
VOLUME 1
BEFORE THE HONORABLE LINDA B. RIEGLE
UNITED STATES BANKRUPTCY JUDGE

Monday, May 9, 2011

2:30 p.m.

Court Recorder: Deborah Hemstreet

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 APPEARANCES:

2 For the Rhodes
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12 Associates, LLC:TRACY A. DiFILLIPPO, ESQ.
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15 Debtor:SHIRLEY S. CHO, ESQ.
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(Telephonic)

1 (Court convened at 02:36:26 p.m.)

2 THE COURT: Be seated.

3 (Colloquy not on the record.)

4 THE COURT: All right. Rhodes.

5 Appearances, please.

6 MR. LARSON: Good afternoon, your Honor. Zach Larson
7 on behalf of the Rhodes entities on matters No. 1 through 3 for
8 today.

9 MS. CAVACO: Good afternoon, your Honor. Sue Cavaco
10 on behalf of Stanley Consultants, Inc.

11 MR. SHERMAN: Good afternoon, your Honor.
12 Shlomo Sherman of Kolesar & Leatham on behalf of the Rhodes
13 entities for matter No. 4.

14 MS. DiFILLIPPO: Good afternoon, your Honor.
15 Tracy DiFillippo on behalf Commerce Associates, LLC, of
16 Jones Vargas.

17 THE COURT: Okay. All right.

18 THE CLERK: And, your Honor --

19 THE COURT: And --

20 THE CLERK: -- we have more parties by phone.

21 THE COURT: Okay. On the telephone.

22 MS. CHO: Good afternoon, your Honor. Shirley Cho
23 and Jeff Nolan of Pachulski, Stang for the reorganized debtors
24 on matters 1 through 3.

25 THE COURT: Okay.

1 MR. DUBLIN: Good afternoon, your Honor. Phil Dublin
2 and Meredith Lahaie for the reorganized debtors for item 4.

3 THE COURT: All right. All right. So the first is
4 the motion to extend time.

5 Mr. Larson.

6 MR. LARSON: Matter No. 1, your Honor.

7 THE COURT: Yeah.

8 MR. LARSON: Yes.

9 THE COURT: Right.

10 MR. LARSON: We have come to an agreement to extend
11 the time on that, your Honor. And, indeed, I believe the
12 matter's been settled. We're just looking --

13 THE COURT: Oh, good.

14 MR. LARSON: We're looking for time to settle it --

15 MS. CAVACO: I --

16 MR. LARSON: -- (indiscernible).

17 MS. CAVACO: That is accurate, your Honor.

18 THE COURT: Okay. So I just realized this pen was
19 also a highlighter. It was like -- all right. So that's
20 granted, and what date did you want to continue the objection
21 to, I mean, not a continued hearing date.

22 (Colloquy not on the record.)

23 THE COURT: I mean what date --

24 MR. LARSON: If we can get --

25 THE COURT: -- in the order.

1 MR. LARSON: -- a date in July, your Honor.

2 THE COURT: Okay. You don't want a continued hearing
3 date, though, just --

4 MR. LARSON: I believe we should probably continue
5 the hearing date --

6 MS. CAVACO: Just --

7 MR. LARSON: -- just in case, but I --

8 MS. CAVACO: No. I --

9 MR. LARSON: I --

10 MR. CAVACO: I --

11 MR. LARSON: I --

12 THE COURT: Okay.

13 MS. CAVACO: I'm in agreement with that, your Honor.

14 THE COURT: All right.

15 MS. CAVACO: That way we can keep the fire burning --

16 THE COURT: So do we have --

17 MS. CAVACO: -- so to speak.

18 THE COURT: -- a Rhodes date in July?

19 THE CLERK: Your Honor, just a moment. Let me look
20 here. I believe we do.

21 THE COURT: Probably not.

22 THE CLERK: I don't see it. I'm sorry.

23 THE COURT: Okay. So how about July 19th --

24 THE CLERK: What time, your Honor?

25 THE COURT: -- at 9:30?

1 And you can use that for your omnibus day.

2 MR. LARSON: If I can just confirm, your Honor, that
3 I'm not --

4 THE COURT: Oh, sure.

5 MR. LARSON: I know I have a family vacation that's
6 scheduled. That's Tuesday?

7 THE COURT: Um-h'm. Is that --

8 MR. LARSON: We're good.

9 THE COURT: Is that a bad week?

10 MR. LARSON: Nope.

11 THE COURT: Nope.

12 MR. LARSON: We're good.

13 THE COURT: Okay. Good. All right.

14 MS. CAVACO: Thank you --

15 THE COURT: So --

16 MS. CAVACO: -- your Honor.

17 THE COURT: So I'll grant -- now, and if I'm granting
18 the motion -- well, I'm granting the motion. The point is if
19 you have to file an additional time, then you'll file your
20 motion and put it on for that day. Will that work?

21 MR. LARSON: That will work, your Honor.

22 THE COURT: So I'll extend the claims-objection
23 deadline to July 22nd. If you need to bring it to have it
24 heard, you could set it for the 19th.

25 MR. LARSON: Thanks, your Honor.

1 THE COURT: Okay?

2 MS. CAVACO: Thank you.

3 THE COURT: All right. Next, we have the objection
4 to claim 18-1 of Slaughter.

5 MR. LARSON: Yeah. Good afternoon, your Honor.

6 Zach Larson. They did file a response to this. I believe it
7 was late Friday. They asked for written permission.

8 I would still ask your Honor strike that and grant our
9 objection. It was very untimely. It was filed by an attorney.
10 He had over 40-days' worth of notice on it, and he's not here
11 today.

12 THE COURT: And they're not, and Wirsbo doesn't
13 represent Mr. Slaughter, correct?

14 MR. LARSON: I don't --

15 THE COURT: I mean --

16 MR. LARSON: I believe he represents Mr. Slaughter,
17 but not on matter No. 3. We've been advised he doesn't
18 represent that particular client, anymore, and I believe you
19 pronounce it Casimiro.

20 THE COURT: Okay. So --

21 MR. LARSON: And the basis of the Slaughter claim
22 objection, basically, he sought to have a class-action claim
23 certified. That was denied.

24 We have no allegation whatsoever to give any credibility
25 to his claim, and he filed the last-minute response, and he's

1 not here today.

2 THE COURT: Okay. But Mr. Slaughter himself, he --
3 who filed the -- Mr. Slaughter filed the claim?

4 (Colloquy not on the record.)

5 MR. LARSON: Let me --

6 (Colloquy not on the record.)

7 MS. CHO: Your Honor, it's Shirley Cho of
8 Pachulski, Stang. The claim was filed by counsel on behalf of
9 Slaughter.

10 THE COURT: On Mr. Slaughter. And Mr. Slaughter
11 doesn't own one of the debtor homes?

12 MS. CHO: That's --

13 THE COURT: Put --

14 MS. CHO: That's correct, your Honor.

15 THE COURT: Okay. Let's put the class-action issue
16 aside for a moment. The issue of why Mr. Slaughter's claim
17 should be denied is because he doesn't own a home, anymore, as
18 I understand if from your motion or your objection?

19 MR. LARSON: That's correct --

20 MS. CHO: He --

21 MR. LARSON: -- your Honor.

22 MS. CHO: He never owned a home. We never sold a
23 home to him, your Honor, as far as our records can tell.

24 THE COURT: Okay. All right. So I'll sustain the
25 objection, then, as to Mr. Slaughter.

1 MR. LARSON: Thank you --

2 THE COURT: And then --

3 MR. LARSON: -- your Honor.

4 THE COURT: -- as to Casimiro --

5 MR. LARSON: It's similar, your Honor. There was no
6 response filed. As it turns out, they both filed for relief
7 under either Chapter 7 or Chapter 13.

8 We've negotiated or tried to negotiate since early 2010
9 this matter. The trustee basically said, hey, it doesn't
10 apply, they've lost the house, it's dismissed, so we'd ask for
11 our objection to carry.

12 THE COURT: Okay. And --

13 MR. LARSON: And this claim, it was originally
14 represented by the attorney in the Slaughter matter, but I do
15 believe Mr. Nolan's declaration claims that during the process
16 of negotiation he did say he longer represents the Casimiros.

17 THE COURT: Okay. All right. I'll sustain that
18 objection.

19 MR. LARSON: Thank you, your Honor.

20 THE COURT: And, again, just for a clarification, it
21 seems to me the issue is since there is no class action each of
22 these claims must be viewed as a claim brought by that
23 individual against the debtor.

24 And so you have to look at whether or not the individual,
25 Mr. Slaughter or Mr. Casimiro, Ms. Casimiro, has a cognizable

1 claim.

2 And since they don't -- do the rights to construction
3 defect cease once you own the property, once you cease to own
4 the property? Do you have a separate action for damages?

5 MR. LARSON: You know, I --

6 MS. CHO: Your Honor --

7 MR. LARSON: I --

8 MS. CHO: -- it's Shirley Cho again for
9 Pachulski, Stang. I guess whether or not I -- I'm not sure
10 what the answer is to your Honor's question.

11 But I think the point is that we've never received
12 information that the claimants themselves have incurred any
13 out-of-pocket costs on account of their alleged claim.

14 MR. LARSON: And --

15 THE COURT: Okay.

16 MR. LARSON: And I apologize for not knowing
17 Chapter 40 better, your Honor.

18 THE COURT: All right. I'll sustain the objection.

19 MR. LARSON: Thank you, your Honor.

20 THE COURT: All right. Next, we have the objection
21 to Claim 61 of Commerce Associates.

22 MR. SHERMAN: Good afternoon, your Honor.

23 Shlomo Sherman on behalf of the reorganized debtors. I don't
24 have much to add beyond that which is already stated in our
25 pleadings.

1 But I would like to summarize some of the main points.
2 And if your Honor has questions afterwards, I'll be happy to
3 address them.

4 First and foremost, we're requesting that the Commerce
5 claim be deemed unsecured. Every single document giving rise
6 to the Commerce claim which includes some declarations that
7 were recorded were all subordinated to Credit Suisse.

8 At every point of the relationship between Credit Suisse
9 and the reorganized debtors and Commerce whenever property was
10 acquired by the reorganized debtors or a subsidiary, documents
11 were recorded that made that property subject to the first and
12 second lien of Credit Suisse.

13 And subordination agreements were recorded and executed by
14 Commerce that subordinated whatever lien Commerce may otherwise
15 have had to Credit Suisse's liens.

16 Once we have that subordination, your Honor, under the
17 plan, the property was deemed insufficient to satisfy
18 Credit Suisse's claims alone, and so the balance of all other
19 claims are unsecured and need to be treated as unsecured claims
20 under the plan.

21 In their opposition, Commerce argued that some of the
22 property that was taken down subsequent to the subordination
23 agreement that we attached to our claim objection were not
24 subject to that objection -- or sorry -- were not subject to
25 the original credit facility.

1 We have since provided in our reply subordination
2 agreements that relate to each and every one of the takedowns
3 that Commerce referred to.

4 That Commerce I believe attached four grant, sale, bargain
5 deeds and relating to various properties. We have attached
6 three subordination agreements.

7 The first subordination agreement relates to the
8 property under the first deed that Commerce
9 attaches.

10 The second subordination agreement that we attached to our
11 reply relates to the second and third deed attached by
12 Commerce.

13 And the third subordination agreement that we have
14 attached relates to the fourth deed that Commerce has attached
15 reflecting that each and every one of the properties that may
16 have been subject to Commerce's lien were subordinated to
17 Credit Suisse's superior lien.

18 THE COURT: Okay.

19 MR. SHERMAN: Next, your Honor, we have addressed the
20 amount of Commerce's claim. We've pointed out that the lot
21 premiums that Commerce would have been entitled to was
22 approximately \$3,011,322.

23 We have also pointed out that the profit-participation
24 payments that Commerce would have been entitled to the
25 reorganized debtors actually overpaid the amount of \$270,226.

1 Netting those out against each other, Commerce would be
2 entitled to an unsecured claim of \$2,741,096.

3 Your Honor, these figures are supported by the declaration
4 of Justin Bono, and we've attached spreadsheets to the original
5 claim objection demonstrating how we arrived at these figures.

6 Ironically, your Honor, it turns out that the reorganized
7 debtors have been the best advocate for Commerce's claim. The
8 claim was not filed on the official form. It was filed a day
9 late.

10 It didn't provide any kind of an amount in the nearly two
11 years that have lapsed since the claim was filed. There's been
12 no attempt to liquidate that amount.

13 The attachments to that claim that purportedly supported
14 the claim were unexecuted, unrecorded documents. We have
15 provided the recorded and executed copies of those documents.

16 We have the declaration of Justin Bono saying, hey, we
17 agree that this is the amount that is owed, but that amount has
18 to be unsecured, and that amount has to be liquidated at this
19 time.

20 Your Honor will note that in the opposition there was no
21 counter to the amount that we have claimed to be owed. There
22 was just further reservations of rights to challenge the
23 debtor's books and records.

24 The opposition also ignores the additional subordination
25 agreements that have been executed by Commerce and had to have

1 been recorded.

2 And then there's a little bit of the opposition,
3 your Honor, that attempts to improperly shift the burden of
4 proof to the reorganized debtors to demonstrate that there were
5 no material amendments to the credit facility or the burden to
6 the reorganized debtors to demonstrate that we didn't get
7 profits when we sold the homes.

8 Your Honor, I think that all of those issues are
9 appropriately addressed in the declaration of Justin Bono.
10 It's supported by the only evidence that has been presented by
11 any of the parties.

12 And on that basis, your Honor, I would request that
13 your Honor deem the Commerce claim unsecured and liquidate it
14 in the amount that I indicated earlier.

15 THE COURT: All right.

16 MR. SHERMAN: Thank you.

17 THE COURT: Opposition.

18 MS. DiFILLIPPO: Thank you, your Honor. After
19 reviewing the objection and the reply with the attached
20 subordination agreements, each of the subordination agreements
21 apply to different parcels.

22 And Michael Buckley at my office who handled most of the
23 -- well, handled most of the -- all the subordination
24 agreements and purchase agreement, all those various documents,
25 went through.

1 And we could not confirm that a subordination agreement
2 applied to lot 15 which would be takedown No. 7 and takedown
3 No. 11 which applied to lots 1 through 4, 16 through 83,
4 91 through 171, 176 through 205, and parcel 6-A.

5 I think that alone creates some issues of fact here that
6 we need to --

7 THE COURT: So how many --

8 MS. DiFILLIPPO: -- fully --

9 THE COURT: So are there some you concede you
10 subordinated?

11 MS. DiFILLIPPO: Yes. We did after we went through
12 and looked at the reply and looked through. Mr. Buckley looked
13 through the various documents that we had, and we did see some
14 subordination agreements, all of them --

15 THE COURT: Well, all these --

16 MS. DiFILLIPPO: -- except for the ones --

17 THE COURT: -- are recorded.

18 MS. DiFILLIPPO: -- that I mentioned.

19 THE COURT: Why didn't you do that before you filed
20 your original response?

21 MS. DiFILLIPPO: Well, first of all, when Mr. Buckley
22 looked at the response, footnote No. -- I mean, sorry -- looked
23 at the objection, footnote No. 5 of the reorganized debtor said
24 that they would provide us their documentation, and he
25 contacted them to get this documentation to verify information.

1 They did not return his call.

2 And so at that time, Janet Chubb was in our office and
3 went over to a different office, and she's the one that filed
4 the proof of claim.

5 And Mr. Buckley went through the documentation, and he
6 entered the time and did not see that all of the subordination
7 agreements. He went through as much as he could to see which
8 ones, and it was his understanding --

9 THE COURT: So --

10 MS. DiFILLIPPO: -- at the time that --

11 THE COURT: Okay. Sorry.

12 MS. DiFILLIPPO: -- sorry.

13 THE COURT: Go ahead.

14 MS. DiFILLIPPO: -- go ahead --

15 THE COURT: No. My fault.

16 MS. DiFILLIPPO: -- Tuscany III and Tuscany IV
17 weren't applicable, and that does apply to the takedown No. 7
18 and takedown No. 11, the various lots that I mentioned.

19 THE COURT: So you concede those do apply or don't?
20 I'm sorry. Do apply or don't apply? You are subordinated to
21 -- you agree you're subordinated to which ones again? I
22 apologize.

23 MS. DiFILLIPPO: I think it would be better to say we
24 don't agree to --

25 THE COURT: Okay.

1 MS. DiFILLIPPO: -- the takedown No. 7 and takedown
2 No. 11 --

3 THE COURT: Okay.

4 MS. DiFILLIPPO: -- because there's a lot of other
5 ones. It would be a lot longer for me to go through,
6 your Honor.

7 THE COURT: Okay. So just 7 and 11.

8 MS. DiFILLIPPO: Yes.

9 THE COURT: And how have you joined -- it seems to me
10 you're going to have to join in Credit Suisse if you're going
11 to contend that you're ahead of them.

12 MS. DiFILLIPPO: I think that's something we need to
13 under -- what I would request, your Honor, under
14 Local Rule 3007 since there are factual issues here that we
15 need to address this and continue this hearing to go through
16 those factual issues. We --

17 THE COURT: Well, it's not factual. I mean, the
18 point is they either do match or they don't match, and I think
19 what you're telling me is you just haven't had time to
20 double-check to see if they match. I'm not going to waste my
21 time with a trial if you just haven't had time to match them
22 up.

23 MS. DiFILLIPPO: That's one issue, your Honor. And
24 the other issue with respect to their numbers, we were not able
25 to verify their books and records.

1 They said that in their footnote that they would provide
2 those us to verify. They did not, your Honor, do that, so we
3 have not -- the numbers before November of 2005, they owed us
4 the lot premiums and the profit participation at the time of
5 closing with third parties, so we would not have that
6 information.

7 After November 2005, we did receive the lot premiums from
8 them at the time of our closing, but the profit participation
9 was not provided until the closing of the third parties.

10 Again, we would not receive that information. That
11 would be with the debtor, and so we did not have the
12 information.

13 Mr. Buckley tried to contact them pursuant to their
14 footnote saying they would make that available to us, and they
15 did not provide that --

16 THE COURT: Well, you could have done --

17 MS. DiFILLIPPO: -- to us.

18 THE COURT: -- a discovery request. It's a contested
19 proceeding. You could have done a discovery request. Well,
20 I'm going to continue this. Obviously, you're not ready for
21 this today, so I'll continue it.

22 You're going to have to supplement your reply to indicate
23 exactly why you say 7 and 11 isn't subject to the subordination
24 agreement. And if you think you're not, then you're going to
25 have to join Credit Suisse, then --

1 MS. DiFILLIPPO: We will do that, your Honor.

2 THE COURT: -- because then it's a title issue.

3 MR. SHERMAN: Yeah. Your Honor, I have just one
4 other comment. I know that I personally was not contacted by
5 Mr. Buckley.

6 I know that once I got the opposition, and I didn't feel
7 that it was appropriate for a hearing given the fact that these
8 are executed, recorded documents. We can work it out.

9 I had asked that we have some kind of a meeting to decide
10 whether or not it's appropriate to go forward, and I never had
11 that opportunity.

12 I would say, however, that the burden of proof is not on
13 the reorganized debtors to prove Commerce's claim. Commerce
14 filed the claim almost two years ago, and the --

15 THE COURT: I agree. I mean --

16 MR. SHERMAN: The effective date was a year ago,
17 your Honor.

18 THE COURT: Right. I agree. So what's happened is
19 the prior counsel apparently lost track of the case. You've
20 got it now. Finish it. You've got 60 days to finish it up.

21 MR. SHERMAN: I have one final point, your Honor, and
22 that is that with respect to all the properties that are at
23 least listed in the opposition this morning I went over them
24 and matched the legal description to the subordination
25 agreements.

1 And I'm fairly certain that each and every one of the
2 legal descriptions in the subordination agreements covers a
3 corresponding legal description --

4 THE COURT: Well, and --

5 MR. SHERMAN: -- as to those properties.

6 THE COURT: And you're going to have to get serious
7 this time. I mean, you can't just do a cursory review. I
8 mean, you've got to -- if you file an affidavit saying they
9 don't match, it's under Rule 11.

10 MS. DiFILLIPPO: I understand that, your Honor.

11 THE COURT: So make sure.

12 MS. DiFILLIPPO: I --

13 THE COURT: You know, I know --

14 MS. DiFILLIPPO: And --

15 THE COURT: -- that's --

16 MS. DiFILLIPPO: And if we verify they are, then we
17 know that, but Mr. Buckley told me he went through these
18 personally himself, and that's what he came up with, and he
19 gave me a chart of which ones.

20 THE COURT: Well, then he'll have to supply the
21 affidavit --

22 MS. DiFILLIPPO: Right.

23 THE COURT: -- next time.

24 MS. DiFILLIPPO: And I have instructed him --

25 THE COURT: So let's continue --

1 MS. DiFILLIPPO: -- on that.

2 THE COURT: -- this out 60 days to give you plenty of
3 time to do your due-diligence discovery. And, again, if you
4 think that you're in first position, you're going to have to
5 join Credit Suisse.

6 MS. DiFILLIPPO: Understand, your Honor.

7 THE COURT: Do you want to go to July 19th, then?

8 MS. DiFILLIPPO: Thank you, your Honor.

9 THE COURT: Okay.

10 MR. SHERMAN: Thank you, your Honor.

11 THE CLERK: Did you want this at 9:30, also,
12 your Honor?

13 THE COURT: Sure. We'll make another Rhodes day.

14 And if you want a settlement conference in the meantime --
15 I don't think you need that. That takes more effort than just
16 meeting.

17 Now that you know who the parties are that are dealing
18 with this case, call each other now that you know who's
19 responsible for the case --

20 MR. SHERMAN: Agreed, your Honor.

21 THE COURT: -- I mean, because you just got involved,
22 too, didn't you, in this one, Mr. Sherman? You weren't
23 involved in this before, were you?

24 MR. SHERMAN: That's correct. I've recently
25 joined --

1 THE COURT: That's what I thought.

2 MR. SHERMAN: -- Kolesar & Leatham.

3 THE COURT: So we got new people all the way around,
4 so all right.

5 Thank you.

6 MR. SHERMAN: Thank you --

7 MS. DiFILLIPPO: Thank you --

8 MR. SHERMAN: -- your Honor.

9 MS. DiFILLIPPO: -- your Honor.

10 THE COURT: Um-h'm. Okay.

11 THE CLERK: All rise.

12 (Court concluded at 02:55:02 p.m.)

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1 I certify that the foregoing is a correct transcript
2 from the electronic sound recording of the proceedings in
3 the above-entitled matter.

4
5
6 /s/ Lisa L. Cline

07/13/11

7 Lisa L. Cline, Transcriptionist

Date